

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 11-11530-GAO

BC CAPITAL PARTNERS LLC,
Plaintiff,

v.

MPG OPERATIONS, LLC f/k/a MILLENNIUM OPERATIONS, LLC,
Defendant.

ORDER
August 2, 2012

O'TOOLE, D.J.

The plaintiff, BC Capital Partners LLC, alleges that the defendant, Millennium Operations LLC, breached the implied covenant of good faith and fair dealing by terminating an agreement between the parties in order to deprive BC Capital of approximately \$5 million in deferred compensation that would have vested within a year.

One may find it unlikely that Millennium terminated the agreement for that purpose in light of the significant losses BC Capital suffered just prior to termination of the agreement. Nevertheless, the theory is not wholly implausible, see Wakefield v. N. Telecom, Inc., 769 F.2d 109, 112 (2d Cir. 1985), and dismissal at this stage therefore is improper. See Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 13 (1st Cir. 2011) (“[A] well-pleaded complaint may proceed even if . . . recovery is very remote and unlikely.”) (internal citations and quotations omitted).

Similarly, recovery may be possible under the plaintiff’s other theories depending on the evidence presented at trial. Accordingly, the defendant’s motion (dkt. no. 14) to dismiss is DENIED.

The motions (dkt. nos. 3, 12, 16 & 22) to seal are GRANTED. The motion (dkt. no. 20) to amend is GRANTED. The motion (dkt. no. 7) to remand is DENIED. The motion (dkt. no. 31) for a protective order is GRANTED NUNC PRO TUNC.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge